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DEPARTMENT FOR AF/E SUSAN DRIANO

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SUBJECT: KENYA: BY-ELECTIONS FIRST TEST FOR IIEC

¶1. (SBU) SUMMARY: On August 27 the Interim Independent Electoral Commission (IIEC) held two by-elections for vacant parliamentary seats. The elections in Bomachoge (Nyanza Province) and Shinyalu (Western Province) were an important first test of the IIEC's capacity to organize an election and curb election malpractices. The IIEC was largely successful on the first count as observers reported that the voting and tabulation processes were generally credible and transparent. The IIEC was not successful in curbing "old school" electoral malpractice by candidates as observers witnessed numerous instances of apparent voter bribery. END SUMMARY.

BY-ELECTIONS PROCEDURALLY CLEAN

¶2. (SBU) The August 27 by-elections in Shinyalu and Bomachoge were the first major task faced by the Interim Independent Electoral Commission (IIEC). Sworn into office five months late on May 8, the IIEC had just four months to organize the by-elections. Prior to the elections IIEC commissioners outlined for donors a number of challenges they faced in preparing for the by-elections. The IIEC began its work with staff inexperienced in running elections because all commissioners and staff of the former Electoral Commission of Kenya had been dismissed. In addition, the IIEC is in the midst of drafting proposed reforms to Kenya's electoral law, but was obligated to administer the by-elections under the old electoral framework.

¶3. (SBU) The IIEC undertook a month-long registration for the by-elections in July, a process that removed duplicate and deceased voters from the rolls and required residents to re-register and receive a new voter card. Voter disinterest and the removal of names from the 2007 register resulted in substantially lower figures for the 2009 register: a 44 percent decrease in registered voters in Shinyalu and a 23 percent decrease in Bomachoge. As observers noted in the field, the IIEC's registration process was considered cumbersome by voters and some individuals received new voter cards but were not listed on the register and thus disenfranchised.

¶4. (SBU) The logistical preparation for and administration of the by-elections by the IIEC was generally competent. The IIEC exchanged returning officers and polling station clerks between Shinyalu and Bomachoge the day before the election in a bid to frustrate efforts by candidates to bribe these officers; however, the swapping of local election officials generated protest from candidates and also some staffing gaps as Bomachoge has 130 polling stations to Shinyalu's 80. Nevertheless, materials were distributed through the night on the July 26 and most polling stations opened by 6:30 a.m. on election day.

¶ 15. (SBU) Voting proceeded slowly but peacefully with a few reported irregularities in both constituencies. Candidates filed complaints that party agents in some stations were removed from the polling station, and observers noted that in some instances illiterate voters were assisted by polling station presiding officers without the presence of party agents as required by Kenyan electoral law.

¶ 16. (SBU) The most common problem, present at nearly all polling stations, were voters holding newly issued cards whose names were not on the register. Polling station officials did not receive timely or clear guidance from the IIEC in how to resolve this problem. Though IIEC commissioners attempted to address these issues by driving the master register to affected stations late in the day, it was physically impossible to reconcile all cases. The problem affected approximately 1,000 voters in Bomachoge and 300 in Shinyalu. It is possible that the disenfranchised voters could have changed the outcome in Bomachoge, where the Orange Democratic Movement (ODM) candidate won with a 700 vote margin.

¶ 17. (SBU) The vote tally in both constituencies was slow but generally transparent. Votes were counted at polling stations with party agents present in nearly all cases; the boxes were subsequently resealed and transported to the tallying centers where results were entered into a publicly displayed Excel spreadsheet. Disputed votes were adjudicated at the tallying center in the presence of observers and party agents. With the exception of the

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Party for National Unity (PNU) candidate in Bomachoge, all parties agreed that the tabulation process was credible and fair. The PNU candidate expressed concern about the results from several polling stations and at one point requested a recount, but did not formally contest the final results.

OLD SCHOOL POLITICS UNDERMINE ELECTIONS

¶ 18. (SBU) Despite the procedural integrity of the by-elections, the process was undermined by voter bribery and intimidation by candidates, behavior which the IIEC was unable to discourage or penalize. Interviews with all major candidates in Shinyalu the day before the by-elections revealed that candidates were not running issue-based campaigns; rather, each made the case to voters that they were best placed to funnel state resources to the constituency. Observers and residents reported that candidates sought to undermine turnout in competitors' strongholds by purchasing voter cards ahead of the election, and one held traditional "oathing" ceremonies in which voters were intimidated into pledging support for the candidate. On the day of the election, several candidates hired agents to dispense cash in return for promised votes; apparent vote buying operations were present near the entrances to polling stations. In Bomachoge, the PNU candidate told us he believed the ODM had compromised the deputy returning officer.

¶ 19. (SBU) IIEC officials did not have the capacity to address the reported malpractices. Each polling station was assigned two police officers, and while some arrests for voter bribery were made, as a whole the officers did not actively investigate allegations. In some cases the police refused to arrest corrupt party agents when ordered to do so by the IIEC. IIEC commissioners expressed frustration that while they received reports of malpractice before and during the election, current electoral laws do not allow them to arrest, prosecute, or bar candidates without a court order.

¶10. (SBU) It is unclear whether these malpractices altered the outcome of the election. In Bomachoge, where the ODM candidate won with just 700 votes more than the PNU candidate out of approximately 35,000 votes cast, it is possible that voter bribery and corrupted officials in a limited number of polling stations influenced the election in favor of ODM. In Shinyalu, the two parties most extensively engaged in voter bribery (PNU and KADDU) finished well behind the ODM candidate, who received approximately two-thirds of the vote.

COMMENT

¶11. (SBU) Despite some disorganization and some isolated incidents in which polling station officials disregarded protocol, the IIEC demonstrated adequate capacity to organize the by-elections and political independence in adjudicating disputes. Procedurally, the IIEC will need to improve the registration process so that the voters issued new cards are properly registered at their assigned polling station. While commissioners were present and responsive to registration and other problems during the by-election, they were unable to communicate efficiently decisions to the polling station level or to resolve the problems even through direct intervention. As commissioners will not be present in constituencies during the constitutional referendum, it is imperative that, in addition to procedural changes to the registration process, the IIEC must hire an effective secretariat in each constituency that is able to resolve problems on the ground.

¶12. (SBU) Legal reforms will also be needed to both update electoral procedures and strengthen the IIEC's capacity to investigate and prosecute corrupt candidates. The IIEC is drafting proposed reforms which will permit the introduction of electronic voting and tabulation systems. In addition to procedural improvements we will recommend that the commission seek a legal mandate to investigate, prosecute, and bar candidates suspected of engaging in electoral malpractices. The commission will need to work closely with the Committee of Experts on the Constitution and legal affairs committees in Parliament to

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marshal support for the proposed reforms. END COMMENT.

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